



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

(AE-17J)

AUG 12 2004

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

Denny Luma, President  
Superior Aluminum Alloys  
P.O. Box 678  
Edgerton Road 14214  
New Haven, Indiana 46774

Dear Mr. Luma:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Superior Aluminum Alloys (Superior), CAA Docket No. ~~CAA-05-2004-0035~~ As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on AUG 13 2004.

Superior must pay the penalty within 30 days of AUGUST 13, 2004. Your check must display the case docket number, ~~CAA-05-2004-0035~~ and the billing document number, BD# 050304028.

Please direct any questions regarding this case to Cynthia A. King, Associate Regional Counsel, (312) 886-6831.

Sincerely yours,

Brent Marable, Chief  
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Superior Aluminum Alloys,  
L.L.C.  
New Haven, Indiana

Respondent.

) Docket No. CAA-05-2004 0035  
)  
) Consent Agreement and Final  
) Order  
)  
)  
)  
)

CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action instituted pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.34 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (the Consolidated Rules).

2. On December 18, 2003, the United States Environmental Protection Agency (U.S. EPA) filed a Complaint in this action against Respondent, Superior Aluminum Alloys, L.L.C. (Superior). Superior filed its Answer on January 19, 2004. On June 16, 2004, the U.S. EPA filed an Amended Complaint in this action. The Amended Complaint alleges that Superior violated Section 112 of the Act, 42 U.S.C. § 7412, and 40 C.F.R. § 63.1500, the National

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION 5

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OF EPA



Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production at 40 C.F.R. §§ 63.1500 et seq. (Secondary Aluminum Production NESHAP or Subpart RRR).

3. Superior requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

4. Complainant is, by lawful delegation, the Director of the Air and Radiation Division, U.S. EPA, Region 5.

5. Respondent is Superior, which is and was at all times relevant to this CAFO, a limited liability company operating under the laws of the State of Indiana and with a place of business at 14214 Edgerton Road, New Haven, Indiana, 46774.

## **II. REGULATORY BACKGROUND**

6. Pursuant to 40 C.F.R. § 63.1500, the NESHAP requirements at Subpart RRR apply to the owner or operator of each secondary aluminum production facility.

7. Pursuant to 40 C.F.R. § 63.1501 (a), the owner or operator of an existing affected source must comply with the requirements of Subpart RRR by March 24, 2003.

8. Pursuant to 40 C.F.R. § 63.1505 (c)(2), on and after the date the initial performance test is conducted or required to be conducted, the owner or operator of a thermal chip dryer must not discharge or cause to be discharged to the atmosphere emissions in excess of 2.50 micrograms of D/F per Mg of feed/charge.

9. Pursuant to 40 C.F.R. § 63.1506(a)(1), on and after the date on which the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator must operate all new and existing affected sources and control equipment according to the requirements in this section.

10. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of the Act that occurred on or after January 31, 1997, but before March, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

### **III. STIPULATED FACTS**

11. Superior is a "person" as defined at Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

12. Superior owns and operates a secondary aluminum facility at 14214 Edgerton Road, New Haven, Indiana (the facility).

13. Superior owns and operates a thermal chip dryer which was constructed in 1998.

14. The Superior facility is an emission source subject to the requirements of the Act, including, 40 C.F.R. Part 63, Subpart RRR, and any applicable requirements of the federally-approved Indiana State Implementation Plan (SIP).

15. On March 18, 2003, Superior conducted performance emissions testing for D/F on the thermal chip dryer.

16. The results of the testing show the thermal chip dryer was discharging an average of 7.44 micrograms of D/F per Mg of feed/charge.

17. On September 4, 2003, Superior conducted a compliance test on its thermal chip dryer. The test results demonstrated that Superior was in compliance with the D/F emission limit set forth at 40 C.F.R. § 63.1505(c)(2).

#### **IV. TERMS OF SETTLEMENT**

18. The parties agree that settling this action is in the public interest, that the entry of this CAFO without engaging in further litigation is the most appropriate means of resolving this matter, and that the purpose of this CAFO is to ensure compliance with the Act, Sections 112 and 113 of the Act, 42 U.S.C. §§ 7412 and 7413, and the terms of this CAFO;

NOW, THEREFORE, before the taking of any testimony, upon the alleged violations, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

19. This settlement is pursuant to, and in accordance with, 40 C.F.R. § 22.18(b)(2) and (3).

20. Superior admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations.

21. Superior consents to the issuance of this CAFO, the assessment of a civil penalty and the performance of a

Supplemental Environmental Project (SEP), as outlined in Section VII of this CAFO.

22. Superior consents to all of the conditions in this CAFO.

23. Superior waives its right to a hearing as provided at 40 C.F.R. § 22.15(c).

24. Superior waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

25. To the best of its knowledge, Superior certifies that it is complying fully with the Secondary Aluminum Production NESHAP.

26. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Sections 112 and 113 of the Act, 42 U.S.C. §§ 7412 and 7413, for the violations alleged in the Amended Complaint and Section III of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Superior arising from the violations alleged in this CAFO or liability related to violations of the Act. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and it is the responsibility of Superior to comply with such laws and regulations.



27. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

28. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

29. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

30. "Parties" shall mean U.S. EPA and Superior.

#### **V. CIVIL PENALTY**

31. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as justice may require), the size of Superior's business, the economic impact of the penalty on Superior's business, Superior's full compliance history and good faith efforts to comply, the duration of the violations, the economic benefit of noncompliance, and the seriousness of the violations. Based on an analysis of the above factors, including, Superior's cooperation, and agreement to perform a SEP, U.S. EPA has determined that an appropriate civil penalty to settle this action is Sixty-Five Thousand Dollars (\$65,000).



32. Superior must pay the \$65,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America."

33. Superior must send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

34. A transmittal letter, stating Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Cynthia A. King, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

35. This civil penalty is not deductible for federal tax purposes.

36. If Superior does not pay timely the civil penalty, or any stipulated penalties due under paragraph 49, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. Superior will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. Superior will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

#### **VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

38. Superior has agreed to complete the following SEP: the installation of equipment that will provide pre-heated combustion air to Furnace #3 which will result in the reduction



of nitrogen oxides emissions. A detailed Scope of Work is provided as Attachment A to this CAFO.

39. Superior must spend at least \$34,000 in the performance of this SEP.

40. Superior must ensure that the SEP is constructed within one year and the SEP must be operated for two years.

41. Superior certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Superior further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

42. Superior must maintain copies of the underlying research and data for all reports submitted to U.S. EPA according to this CAFO. Superior must provide the documentation of any underlying research and data to U.S. EPA within fourteen days of receipt of U.S. EPA's request for the information.

43. Superior shall submit annual reports to U.S. EPA describing the status of the SEP requirements, beginning January 1, 2005.

44. Superior must submit a SEP completion report to U.S. EPA within 60 days of the full implementation of the SEP. This report must contain the following information:

- a. detailed description of the SEP as completed;

- b. description of any operating problems and the actions taken to correct the problems;
- c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. certification that Superior has completed the SEP in compliance with this CAFO; and
- e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

45. Superior must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

46. In each report that Superior submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

47. Following receipt of the SEP completion report described in paragraph 44 above, U.S. EPA will notify Superior in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Superior 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 49.

48. If U.S. EPA exercises option b. above, Superior may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Superior's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Superior a written decision on its objection. Superior will comply with any requirements that U.S. EPA imposes in its decision. If Superior does not complete the SEP as required by U.S. EPA's decision, Superior will pay stipulated penalties to the United States under paragraph 49 below.

49. If Superior violates any requirement of this CAFO relating to the SEP, Superior must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Superior did not complete the SEP satisfactorily according to this CAFO, Superior must pay a stipulated penalty of \$34,000.





b. If Superior did not complete the SEP satisfactorily, but U.S. EPA determines that Superior: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, Superior will not be liable for any stipulated penalty.

c. If Superior satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, Superior must pay a stipulated penalty of \$3,400.

d. If Superior failed to submit timely the SEP completion report required by paragraph 44 above, Superior must pay a stipulated penalty of \$100 for each day after the report was due until it submits the report.

e. If Superior failed to submit timely any other report required by paragraph 43 above, Superior must pay a stipulated penalty of \$100 for each day after the report was due until it submits the report.

50. U.S. EPA's determinations of whether Superior satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Superior.

51. Superior must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Superior will use the method of payment specified in paragraphs 32 through 34 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

52. Any public statement that Superior makes referring to the SEP must include the following or substantially equivalent language, "Superior undertook this project under the settlement of the United States Environmental Protection Agency's



enforcement action against Superior for alleged violations of the Clean Air Act at its New Haven, Indiana facility."

53. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. Superior must notify U.S. EPA in writing within 14 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Superior's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Superior must take all reasonable actions to avoid or minimize any delay. If Superior fails to notify U.S. EPA according to this paragraph, Superior will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Superior caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of Superior caused or may cause a delay in completing the SEP, U.S. EPA will notify Superior in writing of its decision and any delays in completing the SEP will not be excused.

d. Superior has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

#### **VIII. GENERAL PROVISIONS**

54. This CAFO settles U.S. EPA's claims for civil penalties for the violations alleged in the Amended Complaint and Section III of this CAFO. Full payment of the penalty identified in Paragraph 31 and completion of the SEP described in Paragraphs 38

through 53 shall resolve Superior's liability for these alleged violations. •

55. Nothing in this CAFO restricts U.S. EPA's authority to seek Superior's compliance with the Act and other applicable laws and regulations.

56. This CAFO does not affect Superior's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations.

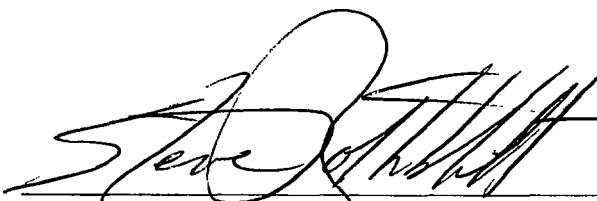
57. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine Superior's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

58. The terms of this CAFO bind the parties, and their successors, and assigns.

59. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection**  
**Agency, Complainant**

Date: 8/12/2004

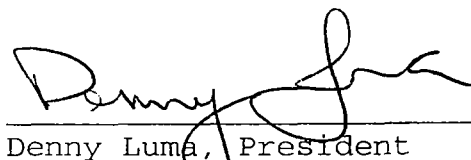
  
Steven Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-18J)

CONSENT AGREEMENT AND FINAL ORDER  
Superior Aluminum Alloys, L.L.C.  
Docket No. CAA-5-2002-

Superior Aluminum Alloys, L.L.C.,  
Respondent

Date: 7/26/04

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Denny Luma", written over a horizontal line.

Denny Luma, President  
Superior Aluminum Alloys, L.L.C.

**CONSENT AGREEMENT AND FINAL ORDER**  
**Superior Aluminum Alloys, L.L.C.**  
**Docket No.**

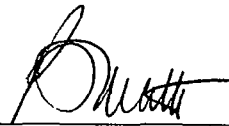
**Final Order**

It is ordered as agreed to by the parties and as stated in the Consent Agreement, effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk.

Dated: \_\_\_\_\_

8/13/04

CAA-05- 2004 0035



\_\_\_\_\_  
Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

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## ATTACHMENT A

Superior Aluminum Alloys, LLC will implement a SEP to reduce NO<sub>x</sub> emissions from its #3 reverberatory furnace. A major component of the system will be the waste heat recuperator in the discharge gas stream of SAA's thermal chip dryer. The exhaust gases from the chip dryer afterburner will pass over recuperator tubes and transfer heat to the cold air inside the tubes.

This air will be drawn through a pre-filter housing and across a U-tube heat exchanger. From there it will be ducted to the inlet of a large pressure blower capable of delivering a nominal 25,000 cfm at 20 ounces pressure. This air will pass through the tubes of the recuperator and into a large insulated plenum. The preheated combustion air will be ducted through the plenum and to the #3 reverberatory furnace burners. The furnace will be equipped with burner packages and controls installed to increase the products-of-combustion recirculation rate at the edges of the flames.

The SEP is expected to provide a 30 to 50% decrease in NO<sub>x</sub> formation rates at the burner when firing at a nominal 14 MMBTUs per hour, and 2000 degrees F. furnace temperature.

While the timeline is subject to change based on vendor supplies, construction scheduling and the execution date of this CAFO, SAA anticipates project completion and system start-up to occur on or around January 2005.

In the Matter of Superior Aluminum Alloys  
Docket No: ~~CAA-05-~~ 2004 0035

RECEIVED  
REGIONAL HEARING  
CLERK

CERTIFICATE OF FILING AND MAILING

I, Betty Williams, do hereby certify that the original of  
the foregoing Consent Agreement and Final Order (CAFO) was  
sent to Superior Aluminum Alloys, was filed with the Regional  
Hearing Clerk, Region 5, United States Environmental  
Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois  
60604; and that a second original of the CAFO was sent Certified  
Mail, Return Receipt Requested, to:


Denny Luma, President  
P.O. Box 678  
Edgerton Road 14214  
New Haven, Indiana 46774

David L. Hatchett, Esq.  
Baker and Daniels  
300 North Meridian Street  
Suite 2700  
Indianapolis, Indiana 46204-1782

I also certify that a copy of the CAFO was sent by First  
Class Mail to:

David McIver, Chief  
Office of Enforcement, Air Section  
Indiana Department of Environmental Management  
100 North Senate Avenue, Room 1001  
Indianapolis, Indiana 46206-6015

on the 13<sup>th</sup> Day of August 2004.

  
Betty Williams, Secretary  
AECAS (IL/IN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0295 2454 - Denny Luma, President  
CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0295 2577 - David L. Hatchett, Esq.

2010.10.10